JAMILIE AB NASIR ABU BAKAR & ANOR

v.

NADARAJA MUTHU

HIGH COURT MALAYA, TAIPING
ZULKEFLI MAKINUDIN J
[CIVIL APPEAL NO: 12-22-99]
4 AUGUST 2000

DAMAGES: *Fatal accident - Loss of dependency - Deduction for contingencies, accelerated payments and other vicissitudes of life - Whether should be made if multiplier has already been reduced - Whether reduction of statutory multiplier equivalent to deduction for contingencies - Takong Tabari v. Government of Sarawak & Ors & Another Appeal - Chan Chin Min & Anor v. Lim Yoke Eng - Civil Law Act 1956, s. 7(3)(iv)(d)*

CIVIL LAW ACT: *Damages - Fatal accident - Loss of dependency - Deduction for contingencies, accelerated payments and other vicissitudes of life - Whether should be made if multiplier has already been reduced - Whether reduction of statutory multiplier equivalent to deduction for contingencies - Takong Tabari v. Government of Sarawak & Ors & Another Appeal - Chan Chin Min & Anor v. Lim Yoke Eng - Civil Law Act 1956, s. 7(3)(iv)(d)*

Having held the 1st defendant and the deceased equally liable for the fatal accident, the sessions judge allowed the plaintiff's (father of deceased) claim for loss of dependency and damages. The session's judge found that the 26-year old deceased had contributed RM600 a month to the plaintiff and, applying a multiplier of seven years' purchase upon 50:50 liability, awarded the plaintiff RM25,200 for loss of dependency. This was the defendants' appeal against both liability and quantum, and in respect of the latter, the main complaint was that the sessions judge had failed to make a one-third deduction for contingencies, accelerated payments and other vicissitudes of life – in line with the recent decision of the Court of Appeal in *Takong Tabari v. Government of Sarawak & Ors & Another Appeal*.

Held:

[1] The sessions judge's finding that the 1st defendant and the deceased were equally liable for the fatal accident was supported by the evidence and hence correct. The sessions judge had not erred in his factual or legal findings; appellate interference was therefore unnecessary.

[2] The principle followed by the Court of Appeal in *Takong Tabari v. Government of Sarawak & Ors & Another Appeal* – in allowing a one-third deduction for contingencies, accelerated payments and other vicissitudes of life – could not be applied to the factual matrix of the present case. This was because the sessions judge had **already reduced** the multiplier from the statutory 16 years' purchase to 7, following the decision of the Supreme Court in *Chan Chin Min & Anor v. Lim Yoke Eng*. This reduction would be **equivalent** to a deduction for contingencies, accelerated payments and other vicissitudes of life.

[3] Deductions for contingencies, accelerated payments and other vicissitudes of life may be effected **either** by reducing the number of years' purchase **or** by reducing the total sum after applying the appropriate statutory number of years' purchase. Hence, there should not be any further deductions for contingencies, accelerated payments and other vicissitudes of life if, as in the present case, the number of years' purchase has already been reduced in consideration of the same.

[Appeal dismissed.]

Case(s) referred to:
Chan Chin Ming & Anor v. Lim Yok Eng [1994] 3 CLJ 687 ***(foll)***
Takong Tabari v. Government of Sarawak & Ors [1998] 4 CLJ 589 ***(dist)***

Legislation referred to:
Civil Law Act 1956, s. 7(3)(iv)(d)

For the appellant - T Kaniamuthan; M/s VP Nathan & Partners
For the respondent - P Balachandran; M/s Sykt Subbaiyah

Reported by Alex KC Lee

JUDGMENT

Zulkefli Makinudin J:

The action under appeal in this case arose in consequence of a road collision that occurred on 27 September 1994 between a motorlorry No: ABW 280 driven by the appellant/first defendant and a motorcycle No. PY 6938 ridden by one Arumugam a/l Nadaraja, deceased (hereinafter referred to as the said deceased rider). The respondent/plaintiff is the father of the said deceased rider. The claim filed by the respondent is for loss of dependency and other damages.

The learned Sessions Court judge, Taiping in his judgment held that the appellant and the said deceased rider were equally liable for the said accident. The learned Sessions judge in assessing the claim for loss of

dependency found and accepted the fact that the deceased rider was earning an income of RM1,500 a month. After having considered all factors including his daily expenditures, the learned Session Judge was satisfied that the deceased rider had contributed not less than RM600 a month to the respondent. As the deceased rider was 26 years of age at the time of the accident, the learned Sessions Judge allowed the claim for loss of dependency for a period of seven (7) years. The number of years purchase or the "multiplier" was reduced from the statutory fixed number of years purchase of sixteen to seven years by the learned Sessions Judge following the principles set out by the majority decision in the Supreme Court case of *Chan Chin Ming & Anor. v. Lim Yok Eng* [1994] 3 CLJ 687. The learned Sessions Judge henceforth awarded a sum of RM25,200 with interest on the basis of 50:50 liability.

The appellant being dissatisfied with the decision of the learned Sessions Judge appealed against the whole of the said decision. Having studied the Appeal Record and having heard the submission of both learned counsels for the appellant and the respondent I hereby dismissed with cost the appellant's appeal on both the issues of liability and quantum. On the issue of liability it is my finding that the learned Sessions Judge had not erred in fact and in law in arriving at his decision that the liability between the parties involved in the accident is to be apportioned on a basis of 50:50. There was sufficient evidence adduced to support the finding of facts made by the learned Sessions Judge on this issue of liability and hence this court sitting as a court of appeal is not inclined to differ with such findings.

On the issue of quantum on the claim of loss of dependency the learned counsel for the appellant submitted that the learned Sessions Judge erred in law when he in assessing dependency and having arrived at an award figure of RM25,200 he failed to take into account the Court of Appeal decision in the case of *Takong Tabari @ Takung Tabari v. Government of Sarawak & Ors* [1998] 4 CLJ 589 in making a one third deduction for contingencies, accelerated payments and other vicissitudes of life. The Court of Appeal in *Takong Tabari*'s case *inter alia* held that the court is bound by the judgment of the majority in the Supreme Court case of *Chan Chin Ming & Anor. v. Lim Yok Eng (supra)*, which stated that as a matter of interpretation, if Parliament had intended to depart from the general system of law, it would express its intention with irresistable clearness, and as proviso (d) to s. 7(3)(iv) of the Civil Law Act 1956 (Act 67) lacked such clearness, the common law practise of making deductions for contingencies, other vicissitudes of life and accelerated payments continued to be in force.

I am of the view that the principles set out by the Court of Appeal in *Takong Tabari*'s case in allowing a one third deduction for contingencies, accelerated payments and other vicissitudes of life cannot be applied to the facts and circumstances of the present case. This is so because in the present case the number of years purchase or the multiplier has already been reduced to seven years following the principles set out in the Supreme Court case of *Chan Chin Ming*. It can be said that the reduction in the multiplier or the number of years purchase made in the present case as being equivalent to the deduction made for contingencies, accelerated payments and other vicissitudes of life as in *Takong Tabari*'s case whereby in that case the claim was made by the deceased wife for loss of support on the death of her husband as a result of a fatal accident. It is my view that it would not be just and equitable to further reduce the sum awarded in the present case as all these factors of contingencies, accelerated payments and other vicissitudes of life must have already been considered when the multiplier had been reduced to seven years. I find support in this argument by reference to the said case of *Chan Chin Ming* wherein his lordship Peh Swee Chin SCJ in delivering the majority decision of the Supreme Court at p. 244 para. D *inter alia* had this to say:

> A court can either take account of such contingencies in fixing the number of years purchase; or doing so on the lump sum after applying the number of years purchase to the basic figure. Either way is permissible.

Based on the above view it is therefore clear that only one of the two methods in reducing the multiplier can be applied to the present case by which it is either through reducing the multiplier as made in *Chan Chin Ming*'s case or by way of reducing the amount that has to be paid after applying the multiplier or the number of years purchase that should be used to the basic figure. Hence, in the circumstances of the present case this court cannot therefore accept the contention of the learned counsel for the appellant that a deduction of one third can be applied simultaneously at the time when the multiplier or the number of years purchase had already been reduced from its statutory fixed number of years purchase of sixteen.

For the above stated reasons I therefore dismissed the appellant's appeal with cost.